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ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOSEPH STECHLER; GAIL STECHLER; AND STECHLER & CO., INC. F/K/A JOSEPH STECHLER & CO., INC.,	**Civ. Action No.** 2:05-cv-03485-HAA-GDH
PLAINTIFFS,	
v.	
SIDLEY AUSTIN BROWN & WOOD, L.L.P.; R.J. RUBLE; ALPHA CONSULTANTS, INC.; ALPHA CONSULTANTS, L.L.C.; IVAN ROSS; IRWIN ROSEN; GRANT THORNTON, L.L.P.; GRANT THORNTON INTERNATIONAL; ISRAEL PRESS; REFCO CAPITAL MARKETS, LTD.; AND REFCO CAPITAL LLC,	
DEFENDANTS.	

PLAINTIFFS' MOTIONTO REMAND

Plaintiffs file their Motion to Remand, and in support thereof show as follows:

1. On July 11, 2005, Sidley Austin Brown & Wood, LLP ("Brown & Wood Defendants"), removed this case from the Superior Court of the State of New Jersey, law Division Bergen County. The basis on which the Brown & Wood Defendants rely for this Court's subject matter jurisdiction is 28 U.S.C. §1331. Because this statute does not provide this Court with jurisdiction over this case involving allegations of wrongdoing under state law for the

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sale of a tax shelter, Plaintiffs have filed this Motion to Remand, seeking remand of this case to the state court from which it was removed.

2. Despite the Brown & Wood Defendants' assertions to the contrary, substantial and disputed issues of federal tax law are **not** necessary elements of Plaintiffs' claims. Therefore, this Court does not have federal question jurisdiction pursuant to 29 U.S.C. §1331. Further, even if there existed a federal question, removal would still be improper because jurisdiction over this matter would not be consistent with Congressional judgment about the sound division of labor between state and federal courts.

3. In support of its Motion, the Plaintiffs are filing contemporaneously herewith their Brief in Support of Motion to Remand ("Plaintiffs' Brief") and the Affidavit of David R. Deary in Support of Plaintiffs' Motion to Remand.

4. For the reasons set out in Plaintiffs' Brief, Plaintiffs respectfully request that this Court GRANT their Motion to Remand and remand this case to the State court.

Respectfully submitted,

KANE KESSLER, P.C.

____
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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOSEPH STECHLER; GAIL STECHLER; AND STECHLER & CO., INC. F/K/A JOSEPH STECHLER & CO., INC.,	:	**Civ. Action No. 2:05-cv-03485-HAA-GDH**
PLAINTIFFS,	:	
v.	:	
SIDLEY AUSTIN BROWN & WOOD, L.L.P.; R.J. RUBLE; ALPHA CONSULTANTS, INC.; ALPHA CONSULTANTS, L.L.C.; IVAN ROSS; IRWIN ROSEN; GRANT THORNTON, L.L.P.; GRANT THORNTON INTERNATIONAL; ISRAEL PRESS; REFCO CAPITAL MARKETS, LTD.; AND REFCO CAPITAL LLC,	:	
DEFENDANTS.	:	

AFIDAVIT OF DAVID R. DEARY IN SUPPORT OF
PLAINTIFFS' MOTION TO REMAND

David Deary, being duly sworn, deposes and says:

1. I am a member of the State Bar of Texas. I am one of the attorneys for plaintiffs in the above-styled case. I make this affidavit in support of Plaintiffs' Brief in Support of Plaintiffs' Motion to Remand.

2. I am lead counsel in over 20 lawsuits regarding the promotion of tax shelters across the country. In addition, I am class counsel in *Denney v. Jenkens & Gilchrist* (03:Civ-5460), in which an $81.55 million class settlement was approved in the Southern District of New York (now on appeal to the Second Circuit). There were over 1100 members of the original Jenkens class, and 89 opted out to pursue separate litigation.

FURTHER AFFIANT SAITH NOT.

SIGNED this 3 day of August, 2005.

David R. Deary

David R. Deary

SUBSCRIBED AND SWORN TO ME on this 3rd day of August, 2005, to certify which witness my hand and seal of office.

RACHEL MYRICK
Notary Public, State of Texas
My Commission Expires
December 08, 2008

Rachel Myrick

Notary Public in and for the State of Texas

12-8-08

My Commission Expires

Rachel Myrick

Printed Name